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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of

Revision of Rules and Policies
for the Direct Broadcast
Satellite Service

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IB Docket No. 95-168
PP Docket No. 93-253

To: The Commission

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COMMENTS OF VIACOM INC.

VIACOM INC.

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TABLE OF CONTENTS

	<u>PAGE</u>
I. VIACOM WELCOMES THE COMMISSION'S COMMITMENT TO PROMOTING VIGOROUS COMPETITION IN MULTICHANNEL VIDEO DISTRIBUTION GENERALLY AND SPECIFICALLY WITHIN DBS	2
II. VIACOM SUPPORTS COMMISSION POLICIES TO PROMOTE COMPETITION BOTH WITHIN DBS AND BETWEEN DBS AND OTHER FORMS OF MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTION	4
III. THE COMMISSION SHOULD ENSURE THAT PROPRIETARY DIGITAL TECHNOLOGY NOT BE USED ANTICOMPETITIVELY TO CREATE A GATEKEEPER BETWEEN CONSUMERS AND PROGRAMMERS	5
IV. CONCLUSION	8

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COMMENTS OF VIACOM INC.

Viacom Inc. ("Viacom") hereby provides its comments in response to the Commission's Notice of Proposed Rulemaking in the above-referenced dockets relating to the rules and policies governing direct broadcast satellite ("DBS") service.¹ As described more fully below, Viacom supports the Commission's goals of promoting DBS as a vibrant and competitive alternative source of multichannel video programming and promoting the development of multiple DBS operators. At the same time, however, Viacom asks the Commission to consider carefully each regulation as applied to this still-emerging service so as to promote rather than hinder competition. Accordingly, Viacom urges the Commission to limit its regulatory authority to critical issues such as ensuring, as it should for all distribution technologies, that DBS providers not be allowed to employ proprietary digital distribution technology in a way that creates

¹ Revision of Rules and Policies for the Direct Broadcast Satellite Service, IB Docket No. 95-168, PP Docket No. 93-253, FCC 95-443 (rel. Oct. 30, 1995) (hereinafter referred to as the "NPRM").

anticompetitive bottlenecks in the free flow of programming to consumers.

I. Viacom Welcomes the Commission's Commitment to Promoting Vigorous Competition In Multichannel Video Distribution Generally and Specifically Within DBS

As a video content provider, Viacom sees every distribution outlet as a potential vehicle for better reaching and serving the viewing public. Viacom has thus consistently urged the Commission to foster the development of competition among multichannel video programming distributors ("MVPDs").² By providing programmers multiple means of distributing their product, such competition makes a greater quantity and quality of video entertainment and information available to and affordable for consumers. Viacom therefore applauds the Commission's desire to ensure that DBS not only develops as effective competition to other types of multichannel video distribution, but that competition among DBS operators is fostered as well.³

At the same time, Viacom has urged the Commission to consider carefully each regulatory intrusion into the marketplace. Overly restrictive regulatory policies may act

² See, e.g., Comments of Viacom Inc., Annual Assessment of the Status of Competition in the Market for the Delivery of Video Programming, CS Docket No. 95-61 (filed June 30, 1995) at 2-3.

³ See NPRM, supra at ¶ 33.

only to inhibit development of the competition the regulations were designed to promote.⁴ In particular, regulations that preclude the use of longstanding pro-competitive business practices may compromise the viability of new competitors while also increasing the costs to them of ensuring regulatory compliance.

The need to carefully weigh the costs of imposing regulation is especially true with regard to DBS. Viacom agrees with the Commission that DBS offers a real opportunity to provide competition in the distribution of multichannel video programming. Indeed, DirecTV and United States Satellite Broadcasting, Inc. ("USSB"), the two high-power DBS operators currently providing service, have made tremendous gains in subscribers in the year and a half in which they have been operating and have demonstrated the potential competitive benefits of DBS for programmers and consumers alike.

Adoption of an overly regulatory approach at this time could severely stunt the growth of this still-emerging distribution service. Witness the Commission's wisdom in allowing the use of exclusive distribution arrangements in DBS. USSB operates at a competitive disadvantage relative to DirecTV because of USSB's more limited channel capacity, yet

⁴ See, e.g., Comments of Viacom Inc., Telephone Company - Cable Television Cross-Ownership Rules, CC Docket No. 87-266 (filed Mar. 21, 1995) at 26-27.

it has been able to attract subscribers in significant part because it is able to offer a programming service line-up differentiated from that offered by DirecTv. Had the Commission not appropriately concluded that USSB's exclusive distribution arrangements with Viacom and Home Box Office were permitted by the 1992 Cable Act and served the public interest, USSB would not be offering the genuinely competitive DBS service it does in fact offer today. This example illustrates that the failure to consider carefully the necessity and appropriateness of any particular regulation as applied to DBS may serve to impede the legitimate business practices of DBS distributors -- such as exclusive distribution arrangements -- and, ultimately, the continued growth of a competitive DBS service.

II. Viacom Supports Commission Policies to Promote Competition Both Within DBS and Between DBS and Other Forms of Multichannel Video Programming Distribution

Viacom entered into its exclusive distribution arrangement with USSB because Viacom believed that it was critical that DBS not be controlled by a single entity. As discussed above, a Commission decision preventing USSB from offering differentiated programming would effectively have led to the establishment of a single high-power DBS provider -- an event that would have harmed programmers and consumers

alike. Viacom continues to believe it essential that, along with enabling DBS to compete with existing MVPDS, Commission policies foster competition among DBS operators.

Viacom therefore supports the Commission's desire to maintain an environment that will promote the development of multiple DBS operators. DirecTv and USSB have demonstrated that viable and competitive DBS systems can be offered within the 32 channel limitation proposed by the Commission. Indeed, DirecTv and USSB together provide more than 150 different program offerings, far more than is provided by most cable operators today. Accordingly, Viacom supports the Commission's tentative conclusion to limit any single entity -- whether or not affiliated with another MVPD -- from having an interest in more than a total of 32 channels at the four orbital locations deemed capable of providing full-CONUS service.⁵

III. The Commission Should Ensure that Proprietary Digital Technology Not Be Used Anticompetitively to Create a Gatekeeper Between Consumers and Programmers

The interest in the development of a fully competitive multichannel video marketplace, shared by the Commission, the viewing public, and programmers such as Viacom, could be undermined by the anticompetitive use of proprietary

⁵ Viacom reserves comment at this time regarding the issue of whether additional restrictions should be placed on the ability of other MVPDs to obtain and utilize DBS capacity.

distribution technology. Such a scenario could allow the creation of a "gatekeeper" controlling the flow of programming between programmers and consumers, especially as the video program distribution business shifts from analog to digital transmission.

Digital transmission, of course, offers the ability to provide to consumers significantly more programming using the same amount of spectrum. At the same time, however, use of proprietary technologies in the distribution of digital programming creates the disturbing possibility of the emergence of a bottleneck that restricts the ability of programmers to reach consumers.

As the Commission is well aware, the potential for anticompetitive bottlenecks is a recurring threat in the distribution marketplace. Viacom has expressed similar concerns in the Commission's ongoing video dialtone proceeding regarding the entry of local exchange carriers into the video program distribution business.⁶ There, Viacom and others have explained how the use of set-top boxes embodying proprietary access control technologies, encryption schemes or compression techniques could result in an untenable choice for consumers between paying for multiple set-top boxes or forgoing certain program offerings because

⁶ See, e.g., Comments of Viacom Inc., Telephone Company - Cable Television Cross-Ownership Rules, CC Docket No. 87-266 (filed Mar. 21, 1995) at 16-20.

the equipment they have purchased already is incompatible with the digital technologies used to transmit those program services. Broadcasters are likewise coming to focus in the advanced television context on the harms that may arise through proprietary control of distribution technology.

This concern could arise as well with regard to the distribution of digitized programming by DBS operators. The Commission has expressed a concern about the potential effect of the proposed "Headend in the Sky" ("HITS") on competition among DBS providers.⁷ Viacom's focus is the potential harm to programmers and, in turn, consumers that could result if DBS technology were to emerge on a proprietary basis as the dominant means for delivery of digital program services to cable operators and other retail distributors of multichannel video programming. The direct result would be that cable operators (or other MVPDs), once having invested in digital receive equipment based on one leading technology, would be reluctant to make duplicative investments to receive programming transmitted by a different digital technology. If certain programmers were denied use of the dominant proprietary technology (or afforded use of such technology on unreasonable terms), consumers would be effectively denied access to that programming. Viacom therefore urges the Commission to prevent the emergence of such closed systems

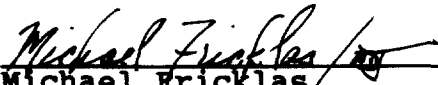
⁷ NPRM at ¶¶ 61-62.

that would serve -- through bottlenecks in digital transmission, access control, encryption or reception -- only to limit consumers' choice of programming.

IV. CONCLUSION

In sum, Viacom supports Commission efforts to ensure that DBS continues to emerge as a viable competitor in the distribution of multichannel video programming and, further, that competition emerges among DBS operators. Viacom therefore agrees that, to prevent a single entity from controlling DBS service, it is appropriate at this time to place reasoned limits on the amount of DBS capacity that can be obtained by any single entity. Further, Viacom urges the Commission to take steps to ensure that the use of DBS technologies to distribute digitized programming to cable operators and other MVPDs does not result in the creation of bottlenecks that ultimately serve to limit the delivery of programming to consumers.

Respectfully submitted,
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